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Philips Electronics North America Corporation*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION

Case No. 07-5944 SC
MDL No. 1917

This Document Relates to:

Case No. C 11-6397 SC

COSTCO WHOLESALE CORPORATION,

Plaintiff,

v.

HITACHI, LTD., et al.,

Defendants,

**THE PHILIPS DEFENDANTS'
AMENDED NOTICE OF MOTION, IN
THE ALTERNATIVE TO DISMISSAL, TO
COMPEL ARBITRATION**

ORAL ARGUMENT REQUESTED

Date: July 9, 2013
Time: TBD.
Before: Hon. Charles A. Legge, U.S.
Judge (Ret.), Special Master

MDL 1917

THE PHILIPS DEFENDANTS' AMENDED NOTICE OF MOTION, IN THE ALTERNATIVE TO DISMISSAL, TO
COMPEL ARBITRATION

AMENDED NOTICE OF MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

On August 17, 2012, Defendants Koninklijke Philips Electronics N.V. (“KPE”) and Philips Electronics North America Corporation (“PENAC”) (collectively the “Philips Defendants”) filed a motion to dismiss claims asserted by the Direct Action Plaintiffs (“DAPs”), including Costco, against the Philips Defendants on the basis that the claims were barred by the statute of limitations. (Dkt. No. 1319) On May 2, 2013, Special Master Legge issued a Report and Recommendation that, *inter alia*, recommended that the Court grant the Philips Defendants’ motion and dismiss the DAP claims without leave to amend. (Dkt. No. 1664) The Philips Defendants intend to promptly move the Court to adopt Special Master Legge’s Report and Recommendation as to the Philips Defendants’ Motion which, if granted, would dismiss the DAP claims against the Philips Defendants, including the claims asserted by Costco that are the subject of this alternative motion to compel arbitration. As will be set forth in the Philips Defendants’ papers moving the Court to adopt the Report and Recommendation as to the dismissal of the Philips Defendants, the Special Master’s Report and Recommendation provides sound grounds to dismiss all DAP claims asserted against the Philips Defendants. The Philips Defendants note, however, that the briefing schedule regarding the motions to adopt the Report and Recommendation, any objections thereto, and the Court’s resolution of the various motions will likely to take some months to resolve. The Philips Defendants therefore file this motion to compel arbitration solely as an alternative to dismissal to avoid any delay relating to the assertion and preservation of their arbitration rights.

Therefore, and subject to the foregoing, PLEASE TAKE NOTICE that on July 9, 2013, at 11:00 a.m., or as soon as the matter may be heard by the Honorable Charles A. Legge, U.S. District Court Judge (Ret.), Special Master, in the San Francisco Resolution Center of JAMS, Two Embarcadero Center, Suite 1500, San Francisco, California, 94111, Philips Defendants will and hereby do move the Court pursuant to Chapter 1 of the Federal Arbitration Act (“FAA”), 9 U.S.C. § 3, and Rule 12(b)(6) of the Federal Rules of Civil Procedure, for an order compelling arbitration of all of Costco Wholesale Corporation’s (“Costco”) claims based on direct or indirect purchases of

1 cathode ray tubes (“CRT”) from the Philips Defendants and dismissing this action regarding these
2 claims.

3 If its claims are not dismissed as untimely, Costco must be compelled to arbitrate its claims
4 against the Philips Defendants because Costco drafted and entered into a valid, written arbitration
5 agreement that broadly covers all claims “arising out of or relating to” the claims asserted. That
6 agreement was entered into directly between Costco and the Philips Defendants, including PENAC.
7 Moreover, Costco alleges that any non-signatory Philips Defendants were “agents” of the signatory
8 and that all Philips Defendants are jointly and severally liable.¹ Because all of Costco’s claims
9 based on the direct or indirect purchases from the Philips Defendants are subject to arbitration, the
10 Court should grant this motion, dismiss the action as it pertains to these claims, and compel Costco
11 to proceed with arbitration.

12 Significantly, this Court has already found on two different occasions that Costco’s claims
13 regarding the *exact* same Costco Vendor Agreement and Standard Terms and, in particular, the
14 mandatory arbitration provisions contained therein, required arbitration.² The outcome should be no
15 different here.

16 The motion³ is based upon this Amended Notice of Motion, the Memorandum of Points and
17 Authorities and exhibits filed with the Court on May 9, 2013,⁴ argument of counsel, and such other
18 matters as the Court may consider.

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22 ¹ *Costco Wholesale Corp. v. Hitachi, Ltd. et. al.*, No. 3:11-cv-06397-SC (W.D. Wash. Nov. 14, 2011), Dkt. (“Compl.”)
¶¶ 9, 55-57.

23 ² *See In re TFT-LCD (Flat Panel) Antitrust Litig.*, Nos. M 07-1827 SI, C 09-05609 SI, 2011 WL 2650689 (N.D. Cal.
24 July 6, 2011) (“LCD Arbitration Order”) (Judge Illston’s Order Compelling Arbitration); *In re: Cathode Ray Tube (CRT)*
25 *Antitrust Litig.*, No. 07-5944 SC (N.D. Cal.) (“CRT MDL”) (November 7, 2012) Dkt. 1433 (“Special Master Legge’s
Report and Recommendation Compelling Arbitration”); CRT MDL (January 28, 2013) Dkt. 1543 (Judge Conti’s Order
Adopting Special Master Legge’s Recommendation Compelling Arbitration) (“CRT Arbitration Order”).

26 ³ This amended notice differs from the original notice only in that the amended notice specifies that the location of the
27 proceedings will take place at the San Francisco Resolution Center of JAMS, Two Embarcadero Center, Suite 1500, San
Francisco, California, 94111.

28 ⁴ Dkt. 1668 and 1669.

Dated: May 10, 2013

Respectfully submitted,

By: /s/ Jon V. Swenson

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Electronics North America Corporation*

CERTIFICATE OF SERVICE

On May 10, 2013, I caused a copy of “THE PHILIPS DEFENDANTS’ AMENDED NOTICE OF MOTION, IN THE ALTERNATIVE TO DISMISSAL, TO COMPEL ARBITRATION” to be electronically filed via the Court’s Electronic Case Filing System, which constitutes service in this action pursuant to the Court’s order of September 29, 2008.

/s/ Jon Swenson

Jon Swenson